

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

CARLOS GRIJALVA YBARRA JR.,  
*Petitioner.*

No. 2 CA-CR 2018-0263-PR  
Filed December 7, 2018

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).*

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Petition for Review from the Superior Court in Pima County  
No. CR044333002  
The Honorable Howard Fell, Judge Pro Tempore

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Joel Feinman, Pima County Public Defender  
By David J. Euchner, Assistant Public Defender, Tucson  
*Counsel for Petitioner*

Lindsey Herf, Robert Dormady, and Katherine Puzauskas, Phoenix  
*Counsel for Amicus Curiae Arizona Justice Project*

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**MEMORANDUM DECISION**

Judge Espinosa authored the decision of the Court, in which Presiding Judge Vásquez and Judge Eppich concurred.

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ESPINOSA, Judge:

¶1 Carlos Ybarra Jr. seeks review of the trial court’s order summarily denying his untimely petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Ybarra has not shown such abuse here.

¶2 Ybarra was convicted after a jury trial of felony murder, conspiracy to commit first-degree murder, and first-degree burglary; all committed in January 1994. The trial court sentenced Ybarra to concurrent prison terms, imposing for felony murder and conspiracy sentences of “[l]ife imprisonment without possibility of parole for a minimum of twenty-five (25) calendar years.” This court affirmed his convictions and sentences on appeal. *State v. Ybarra*, 2 CA-CR 94-0587 (Ariz. App. Jan. 9, 1996) (mem. decision).

¶3 In April 1995, while Ybarra’s appeal was pending, the Arizona Department of Corrections (ADOC) sent a letter to the trial court requesting that the court clarify Ybarra’s life terms, correctly pointing out that the legislature had abolished parole effective January 1, 1994, and that the version of A.R.S. § 13-703 in effect instead stated Ybarra would not be “released on any basis until the completion of the service of twenty-five calendar years.” ADOC also noted the court had not imposed a term of community supervision as required. In response to that letter, and with Ybarra’s agreement, the court resentenced him. The court stated “[t]he minute entry should reflect” the sentences for felony murder and conspiracy should have been “life in prison without possibility of release for twenty-five calendar years.” The court also imposed terms of community supervision for all three counts.

¶4 In 2018, Ybarra filed a notice of and petition for post-conviction relief claiming he was entitled to relief pursuant to Rule 32.1(d), asserting he will be parole eligible on January 10, 2019, but ADOC “intends to deny him a parole hearing.” He also argued that, because the legislature

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had enacted A.R.S. § 13-718, making parole available for defendants who had agreed to parole as part of a plea agreement, he was entitled to “the same parole eligibility” pursuant to the equal protection provisions of the United States and Arizona constitutions. Alternatively, he requested the trial court grant special action relief based on ADOC’s intent to deny him a parole hearing.

¶5 The trial court summarily denied relief, concluding Rule 32.1(d) did not apply because Ybarra’s “sentence expires at the end of his life, not after twenty-five (25) years.” It also concluded special-action relief was “inappropriate” because Ybarra had not “been deprived of his right to be considered for release after serving twenty-five (25) years.” Finally, the court determined Ybarra’s equal protection claim was without merit because he was not in the “same class” as those who had “stipulated parole eligibility in exchange for forgoing their fundamental right to trial.” This petition for review followed.

¶6 On review, Ybarra repeats his arguments that he is entitled to seek relief pursuant to Rule 32.1(d), that he is entitled to parole under an equal protection theory, and, in the alternative, that he is entitled to special action relief. We need not decide whether Rule 32.1(d) relief is available for defendants who are improperly denied a parole hearing. Ybarra asserts he will be eligible for parole on January 10, 2019; thus, even assuming his Rule 32.1(d) claim is cognizable, it is premature and warranted summary denial. Ariz. R. Crim. P. 32.1(d) cmt. (rule applies to claim that defendant “remain[s] in custody when he should be free”).

¶7 Ybarra’s equal protection claim also warrants summary denial. He has articulated no basis for allowing him to raise this claim in an untimely Rule 32 proceeding or otherwise. He has therefore waived this claim, and we do not address it further. *See State v. Stefanovich*, 232 Ariz. 154, ¶ 16 (App. 2013) (insufficient argument waives claim on review).

¶8 As to his request for special action relief, Ybarra did not comply with the procedural requirements to bring such a claim in the trial court. *See generally* Ariz. R. P. Spec. Act. 4. And, although the trial court nonetheless addressed the claim on its merits, Ybarra failed to timely appeal the court’s order denying that claim. *See* Ariz. R. P. Spec. Act. 6 (special action judgment civil in nature), 8(a) (denial of special action relief reviewable by appeal), Ariz. R. Civ. App. P. 5(b) (superior court generally lacks authority to extend time for filing notice of appeal), 9(a) (notice of appeal must be filed “no later than 30 days after entry of the judgment from

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which the appeal is taken"). Thus, we lack jurisdiction to consider it. *See James v. State*, 215 Ariz. 182, ¶ 11 (App. 2007). Insofar as Ybarra asks this court to accept special action jurisdiction, *see* Ariz. R. P. Spec. Act. 7(a), 8(a), in our discretion, we decline.

¶9           Although we grant review, relief is denied.